



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF S- CORP.

DATE: SEPT. 29, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a business software developer, seeks to permanently employ the beneficiary in the United States as a technical lead under the second preference immigrant classification of advanced degree professional. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent residence. The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. Upon *de novo* review, we will sustain the appeal.

The Form I-140 petition was filed on August 11, 2015. As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed with the U.S. Department of Labor (DOL) on November 26, 2013, and certified by the DOL (labor certification) on May 15, 2015.

The Director denied the petition on September 10, 2015, finding that the Petitioner did not establish its ability to pay the proffered wage of the job offered from the priority date of the petition up to the present. The Petitioner filed a timely appeal, along with a brief from counsel and additional documentation, and subsequently responded to our additional request for evidence.

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg'l Comm'r 1977). The petitioner must also establish its continuing ability to pay the proffered wage of the job offered from the priority date up to the present. *See* 8 C.F.R. § 204.5(g)(2). The priority date of the instant petition is November 26, 2013, which is the date the underlying labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

Upon review of the entire record, we conclude that the Petitioner has established that the Beneficiary more likely than not had all the education, training, and experience specified on the ETA Form 9089 as of the priority date, and that his education and experience makes him eligible for classification as an advanced degree professional. We also determine that the Petitioner has established that it more likely than not has had the continuing ability to pay the proffered wage from the priority date up to the present. Accordingly, the petition will be approved under section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), for classification of the Beneficiary as an advanced degree professional.

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The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

**ORDER:** The appeal is sustained.

Cite as *Matter of S- Corp.*, ID# 16705 (AAO Sept. 29, 2016)